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California Regional Water Quality Control Board
San Diego Region 9
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RE: Tentative Order No. R9-2007-0002 NPDES, No. CAS0108740

The members of the community of South Laguna represented by the South Laguna Civic Association, established in 1946, recognizes urban runoff from dry weather flows continues to be discharged through regional storm drain systems permitted exclusively to convey rain water.

The proposed SDRWQCB Tentative Order No. R9-2007-0002 knowingly, willfully and intentionally perpetuates a threat to health and safety and contributes to degradation of local creek and coastal water resources by allowing MS4 storm drain systems to transport polluted water originating from the imported water supply industry. Dry weather flow rates in the subject watershed presently exceed all previous flow rates and are recognized as the principle source of nutrient loading and ocean pollution. Chemical fingerprinting analysis of urban runoff by the Santa Margarita Water District attributes the source of 60% to 90% of urban runoff dry weather flows as originating from imported water sources in either Northern California or Colorado. Dry weather flows to storm drains are from anthropogenic influences rather than natural storm events.

Seminal research by the University of Southern California and others concludes urban runoff is responsible for feeding prolonged, destructive algae blooms along the Southern California Bight. In conveying inland sources of fertilizer and phosphates nutrients, dry weather urban runoff estimated at 6,000,000 gallons per day in the Aliso Watershed alone is causing increased outbreaks of domoic acid poisoning and deaths among sea mammals in Laguna Beach. The SDRWQCB fails to take into consideration impacts of uncontrolled dry season urban runoff on the health and welfare of coastal receiving waters. In spite of repeated requests, the SDRWQCB and Co-Permittees to not incorporate the urban runoff ocean plume into the watershed mapping procedure rendering decision making ineffective and monitoring activities scientifically incomplete.

As indicated in Staff Reports, the SDRWQCB, South Orange County Wastewater Authority (SOCWA), inland cities and County Co-Permittees continue to fail to Cleanup and Abate contaminated dry weather urban runoff flows and thereby violate key statues of the Porter-Cologne Act and Clean Water Act.

In allowing the County and City Co-Permittees to continue to discharge polluted urban runoff water flows, the members of the SLCA and the general public are denied access to safe, unpolluted coastal recreational opportunities while exposing them to known respiratory and digestive illnesses. The incremental and cumulative discharge

from Aliso Watershed storm drains also knowingly and willfully contributes to potential health risks from consuming local fish.

Likewise, potential private property values are threatened by disclosures during real estate transactions of public health hazards emanating from polluted coastal waters. Residences at the mouth of Aliso Creek are permanently damaged by summer urban runoff from erosion and stagnant ponds. Damage from urban runoff pollution to critical kelp habitats and marine mammals characteristic of South Laguna Marine Reserve off of Aliso Beach are well documented in the scientific literature.

The Aliso Watershed has more than 64 storm drains with elevated fecal coliform levels and excessive flow rates. The inability of the SDRWQCB over the past 20 years to control illegal dry weather discharges suggests a pattern of failed interventions portending a dangerous precedent of chronic future water pollution to the community of South Laguna with a population of 5,000 residents and the general beach visiting public.

The South Laguna Civic Association (SLCA) seeks a thorough review of the laws, regulations and facts pertaining to mismanagement of the subject MS4 Storm Drain Permit. Verifiable action capable of significant reductions in dry weather flow rates must be implemented. Numerical flow rate reduction, specific performance benchmark deadlines and significant penalties for non-compliance must be incorporated into any credible permitting process. Interception of urban runoff flows at known inland point sources is technologically feasible through deployment of approved Best Available Control Technologies presently used by the development, military and oil industries. If necessary, a watershed Cleanup and Abatement Order can accelerate permitting and fast track measures until such time full compliance is achieved.

Failure to mitigate or comply requires the SDRWQCB to be directed to California Water Code Section 13304(a) and following to seek an injunction against the County and offending cities or perform the work itself.

Concurrent with the present evaluation of Tentative Order No. R9-2007-0002, the SLCA seeks emergency action due to significant, immediate and potential harm from known health risks associated with dry weather urban runoff conveying elevated levels of fecal coliform contamination to South Laguna since:

1. Substantial harm to the community of South Laguna will continue to occur this summer from exposure to dry-weather flows of contaminated urban runoff in the subject watershed. The approval of a systematically flawed MS4 Storm Drain Program will establish a dangerous precedent in the Aliso Creek Watershed and other impaired watersheds in the State of California to the detriment of South Laguna's public health and safety as well as the protection of natural resources.
2. Neither the inland cities, County, SDRWQCB, SOCWA nor public will incur substantial harm from issuance of a comprehensive dry weather storm

drain management program. The South Laguna Civic Association, in fact, will benefit from incremental reduction of contaminated flows from inland storm drains into creek and coastal receiving waters. Establishing a pattern of enforcement and full compliance with cleanup and abatement laws will initiate additional timely actions by the SDRWQCB to improve water quality in the Aliso Watershed and elsewhere. Costs associated with a comprehensive program to control dry weather flows can be minimized by fines, deployment of cost saving water conservation measures and revenues generated from beneficial reuse opportunities of 6 million gallons of urban runoff per day in the Aliso Watershed.

3. As indicated in this and other communications, substantial questions of fact and law are associated with the proposed Tentative Order No. R9-2007-0002. The fact remains that immediate compliance and cessation of dry weather urban runoff is technologically and economically feasible as demonstrated by earlier diversions to the Moulton Niguel Water District's sewer treatment facility and, later, short term operation of mobilized urban runoff filtration units. The narrative below cites a number of laws pertaining to enforcement of Cleanup and Abatement Orders (California Water Code Section 13304); the SWRCB Water Quality Enforcement Policy (February 19, 2002; pages 3,4,11,26, 39,42); regulations and policies governing Environmental Justice (Government Code Section 65040.12 and Public Resources Code Section 72000).

The County and City Co-Permitees concede their failure to Cleanup and Abate elevated levels of fecal coliform and increased urban runoff flow rates in the Aliso Watershed. The SDRWQCB does not comply with California Water Code Section 13304. Indeed, during the past 20 years, the Regional Board has failed to effectively intervene.

California Water Code Section 213300-13308, Chapter 5, provides the SDRWQCB Enforcement authority to issue a Cleanup and Abatement Order to remedy dry weather urban runoff.

Section 13304(a) "Upon failure of any person to comply with a cleanup and abatement order, the attorney general, at the request of the board, shall petition the Superior Court of the County for an issuance of an injunction requiring the person to comply with the order."

The SDRWQCB unwillingness to enforce compliance also violates Section 13304 (1)(b);(2)(a), (c), (e) to expend available money themselves to perform cleanup, abatement or remedial work; to intervene to perform the work itself; recover costs for cleanup and abatement work; and protect or prevent threatened probability of harm to persons, property or natural resources.

It is again worth noting, temporary compliance was achieved in 2003 utilizing mobilized water filtration units recognized among Best Management Practices (BMP). During its brief period of operation, the above BMP treated over 14 million

gallons at JO3PO2 to reduce fecal coliform from 10,000 cfu's to less than 1. The SDRWQCB, SOCWA, Moulton Niguel Water District, City of Laguna Niguel and County dischargers arbitrarily elected to terminate this effective technology to experiment with low cost constructed wetlands, which ultimately failed to reach compliance levels for fecal coliform at the JO3PO2 outlet and took no effort to remove flows originating from abandoned imported water sources.

The SWRCB Water Quality Enforcement Policy (February 19, 2002; pages 3,4,11,26, 39,42) specifically directs the Regional Board to take action against the following:

- Any knowing, willful, or intentional violation of the (Porter Cologne Act)
- Any violation of (the Porter Cologne Act) that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive edge advantage.
- Any violation that is a chronic violation or that is committed by a recalcitrant violator.
- Any violation that cannot be corrected in 30 days.

The SDRWQCB has taken no action pursuant to the above policies while proceeding to accommodate City and County Co-Permittees, Water Districts, SOCWA and developers at the expense of and detriment to the members of the SLCA and the general public.

Section 13350(m) of the Porter-Cologne Clean Water Act defines nuisance as anything which meets all of the following requirements:

1. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life and property.
2. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
3. Occurs during, or as a result of, the treatment or disposal of wastes.

Dry weather urban runoff meets and exceeds the legal definition of "nuisance" by virtue of its widespread impacts to water quality variables. "Waste" refers to "waste water" knowingly and willfully generated by imported and reclaimed water sold at reduced rates that ignore significant post-irrigation dry weather urban runoff impacts.

Members of the South Laguna Civic Association are at particular risk of injurious health from frequent exposure to pollution in Aliso Creek and recreational coastal water activities. Such threats and illnesses create an obstruction to the free use of public property at local County parks, protect State Marine Reserves and beaches to thereby interfere with the comfortable enjoyment of life and property.

The extent of annoyance and damage is unequal with increasing harm to individuals such as swimmers, surfers, SCUBA divers, etc. with more frequent contact to polluted creek and ocean waters according to recent studies by the University of

California, Irvine. Young children playing long hours at the beach and pregnant women are particularly high-risk populations.

The casual relationship occurring with the discharge of contaminated urban runoff wastewater with elevated fecal coliform levels is well established in scientific and medical literature as to impose a viable threat to the community of South Laguna.

Government Code Section 65040.12 and Public Resources Code Section 72000 states:

“...the fair treatment of people of all races, cultures and income with respect to the development, adoption, implementation and enforcement of environmental laws, regulations and policies”

The proposed Tentative Order No. R9-2007-0002 is discriminatory and violates the State of California's definition of Environmental Justice.

As previously noted, the community of South Laguna and visitors to the Aliso Creek Watershed and Aliso Creek County Beach have entreated the SDRWQCB for decades for relief from polluted urban runoff flows resulting from the non-regulation or enforcement of the County/City's chronic storm drain discharges of dry season urban runoff. Local low income and working class residents have suffered damages to health, safety and liberty in their access to Aliso Creek and the Pacific Ocean. Despite the obvious tangible and verifiable nature of these damages, South Laguna and the general public have yet to receive any effective regulatory assistance either from the State or Regional Water Boards.

This failure to provide relief is not due to any lack of knowledge or information.

The SDRWQCB has repeatedly and extensively investigated the mechanism by which storm drains physically convey fecal coliform bacteria and other contaminants downstream into the Aliso/Woods Canyon Regional Wilderness Park, South Laguna and the Aliso Creek County Beach. There remains no doubt that the City/County dry weather storm drain discharges are the cause of summer beach and ocean pollution. Despite this clear and present causal relationship, the SDRWQCB and Staff have denied pleas from the public for remedial action in the form of abatement of non-seasonal storm drain urban runoff, beneficial reuse for sustainable treatment projects, water conservation and immediate temporary mobilized emergency capture/treatment options common among petrochemical, agribusiness and development economic sectors. In addition, the SDRWCB has not supplied a contingency emergency plan to protect our community and the public from current and summer dry weather MS4 storm drain discharges.

Instead, the Regional Board has relied on promulgating more general directives and future contamination tables, which may or may not be effective in abating polluted urban runoff. The proposed Tentative Order No. R9-2007-0002 is to accommodate the failures of inland Water Districts, SOCWA, Cities and County at the expense of the community, public and ocean ecology.

The SDRWQCB action when combined with the Staff and City/County history of ineffective action towards the residents and visitors of South Laguna, have the cumulative effect of giving second class status to the physical health and safety needs of the public in the Aliso Watershed. Thus any action by the Regional Board to approve the use of MS4 Storm Drain System to knowingly convey dry weather urban runoff flows is discriminatory and violates the State of California's definition of Environmental Justice.

Conclusion

The general regulations, requirements and studies pertaining to the Aliso Creek Watershed and associated MS4 Storm Drain System are clearly not effective in controlling water pollution or the effects of artificially elevated flow rates during the area's annual ten month dry season.

More than twenty years and \$20 million dedicated to achieve compliance in a relatively small, compact 34 square miles residential development watershed is an enormous investment and, ultimately, waste of taxpayer revenues. The failure to achieve compliance represents a lost opportunity to demonstrate effective interventions to protect communities like South Laguna from polluted urban runoff and sends a message to the public that urban runoff pollution cannot be controlled.

Despite the various failed efforts over two decades, the fact remains numerous State laws are being violated by the SDRWCB for allowing the discharge of dry weather flows with elevated fecal coliform levels to continue to pollute daily the protected receiving waters of Aliso Creek and the Pacific Ocean. By this communication, the SLCA reserves the right to appeal any unfavorable decision perpetuating dry season urban runoff flows to Aliso Beach, South Laguna to the SWRCB and State Attorney General for timely relief.

The South Laguna Civic Association appreciates the efforts by the San Diego Regional Water Quality Control Board to consider the enormous impacts of uncontrolled dry weather urban runoff pollution before approving a genuinely effective Storm Drain Permit Program for the Aliso Watershed.

Respectfully submitted,

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